

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.3797 OF 1990

Bank of Maharashtra .. Plaintiff.

Versus

Shrifam Pharmaceuticals & Chemicals

Pvt. Ltd. & Ors. .. Defendants.

Mr.S.R.Shrinivasan for plaintiff.

None for defendants.

CORAM : A.M.KHANWILKAR, J.

DATE : 15th October, 2007.

P.C.:

1. None appears for the Defendants though served. No written statement has been filed on behalf of the Defendants. None appears for the Defendants when the matter is called out. In the circumstances, the Court has no option but to proceed with the matter in exercise of powers under Order 8 Rule 10 of the Code of Civil Procedure, 1908.

2. In substance, the suit claim is founded on the

assertion that the plaintiffs had extended financial facility to the Defendant Nos.1 to 6, by way of Bills Discounting Facility to the extent of Rs.10,00,000/- (Rupees Ten lakhs only). The Defendants had agreed to execute necessary documents in favour of the plaintiffs to secure the said facility. The said Defendants in fact, executed the following documents before availing of the said Bills Discounting Facility : -

- a) Bills purchase and Bills Discounting Agreement.
- b) Letter of Arrangement.
- c) Guarantee Bond executed by Defendant Nos.2,3,4 and 5.
- d) Guarantee Bond executed by Defendant No.6.

3. The Defendant No.1 drew a Bill of Exchange on 2nd September, 1988, for Rs.1,29,330.40. The said Bill of Exchange was duly accepted by the Defendant No.7. The Bill of Exchange stipulates that in case of delay in payment, interest @18% per annum will be charged for the delayed payment. As the amount remained unpaid, the

plaintiffs reminded the Defendant No.1 to repay the amount and called upon by a legal Notice dated 20th October, 1989. As the Defendant No.1 did not respond to the said legal Notice and repay the amount, the other Defendants were called upon to make the good outstanding amount. As even the said Defendants committed default, plaintiffs have left with no alternative but to approach this Court for the following relief :-

"i) That the Defendants be ordered and decreed jointly and severally to pay to the Plaintiff the sum of Rs.1,74,867.96 as per the particulars of Claim - Exhibit "F" hereto, with interest on Rs.1,29,330.40 at the rate of 18% per annum from the date of the filing of suit till payment or realisation and the costs of the suit including costs under Order XXA of the Code of Civil Procedure, 1908."

4. The plaintiffs have filed this suit as a summary suit under Order 37 of the Code of Civil Procedure, 1908. The plaintiffs took out a Summons for Judgement No.516 of 1993. The same has been made absolute in terms of order dated 24th July, 1995 against the Defendant Nos.1,2,5 and 6. In spite of the said order, the Defendants have not

paid any amount to the plaintiffs so far. As mentioned earlier, the Defendants have not even bothered to appear before this Court inspite of service nor have chosen to file written statement. The plaintiffs' case is supported by the documents on which the plaintiffs are relying. Even an affidavit was filed in support of Summons for Judgement, which remained uncontroverted and eventually Summons for Judgement has been made absolute.

5. Taking overall view of the matter, as the plaintiffs have established their case and which assertion has remained uncontroverted, the plaintiffs are entitled for recovery of the suit claim amount, which was shown at the foot of the accounts at the time of filing of the present suit.

6. The next question is whether the plaintiffs are entitled to the interest @18% per annum. Even this issue will have to be answered in favour of the plaintiffs. As the Hundi for amount of Rs.1,29,330.40 itself refers to the interest @18% per annum for the delayed payment, that is the agreed rate of interest between the parties. Besides, the Defendants have executed documents before availing of the Bills Discounting Facility, which also provide agreed rate of interest. Moreover, the

transaction in question between the parties was a commercial transaction.

7. In the circumstances, the plaintiffs are entitled for a decree in terms of prayer in the suit, which is reproduced hereinbelow. Accordingly, I proceed to pass a decree in exercise of powers under Order 8 Rule 10 of the Code of Civil Procedure, 1908.

"i) That the Defendants be ordered and decreed jointly and severally to pay to the Plaintiff the sum of Rs.1,74,867.96 as per the particulars of Claim - Exhibit "F" hereto, with interest on Rs.1,29,330.40 at the rate of 18% per annum from the date of the filing of suit till payment or realisation and the costs of the suit including costs under Order XXA of the Code of Civil Procedure, 1908.

ii) Defendants are ordered to pay costs of the proceedings."

8. Decree be drawn up accordingly in the above terms.

(A.M.KHANWILKAR, J.)